



## **Fact Sheet: EMINENT DOMAIN**

### **INTRODUCTION TO EMINENT DOMAIN**

Governmental entities need to acquire real property for a variety of different purposes. Sometimes the owner will not accept the price offered or does not wish to part with the property regardless of price. When that occurs the governmental entity can begin condemnation proceedings to buy the property it needs.

### **WHAT IS EMINENT DOMAIN?**

Eminent Domain is the ability of a governmental entity to force the sale of real property to the entity for a public use.

- The owner of the property must be paid fair compensation for the property.
- All entities with eminent domain powers are bound by Constitutional restrictions imposed upon the use of the authority.
- The 5<sup>th</sup> Amendment of the United States Constitution provides: "...nor shall private property be taken for public use without just compensation."
- Article 1, Section 17 of the Texas Constitution states: "No person's Property may be taken, damaged, or destroyed for or applied to public use without adequate compensation."
- Both the U.S. and Texas Constitutions provide that no person may be deprived of any property without by due process of law.

### **WHAT IS CONDEMNATION?**

Condemnation is the procedure of acquiring property through forced sale. In Texas, the procedures that must be followed by an entity to exercise its power of eminent domain are set forth in Chapter 21 of the Texas Property Code (state law).

- The condemning entity must make a determination that the taking of private property is necessary to meet a public purpose.
- The condemning entity must negotiate in good faith with the landowner in an attempt to reach an agreement on just compensation for the property.
- If there is no agreement on price, the entity must file a petition for condemnation in court.
- An initial inquiry is made regarding whether the condemning entity has negotiated in good faith and there has been a "failure to agree." Proceedings may be abated to allow for further negotiations.
- If there is still no agreement, the judge will appoint three disinterested persons who reside in the county to act as Special Commissioners to determine the appropriate dollar to be paid for the property being condemned.

### **HOW IS JUST COMPENSATION DETERMINED?**

The Special Commissioners are required to act fairly and impartially and are guided by Sections 21.041 and 21.042 of the Texas Property Code. Section 21.041 provides that the commissioners shall admit evidence on the following topics:

- The alleged value of the property being condemned;
- Any alleged injury to the property owner;
- Any benefit to the property owner's remaining property; and
- The use of the property by the entity seeking to acquire the property.

Section 21.042 of the Texas Property Code specifies the parameters under which the commissioners are to make their assessments:

- Special Commissioners shall calculate the damages according to the evidence presented.
- Any valuation must always consider the highest and best use that the property could be put to now or in the reasonable, foreseeable future.
- If an entire tract is taken, the damage to the property owner is the local fair market value of the property at the time of the Special Commissioners' hearing.
- If only a portion of a tract of land is taken, the damages will be the fair market value of the part taken and the damages, if any, to the remainder of the property as a result of the taking.
- The Special Commissioners shall consider the injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use or enjoyment of the parcel, at the time of the hearing or in the reasonable, foreseeable future.
- Please refer Section 21.042 of the Texas Property Code for more guidance on this issue.

### **WHO PAYS THE COST OF AN EMINENT DOMAIN PROCEEDING?**

After determining just compensation, the Special Commissioners determine the assessment of costs for the proceeding. The commissioners can assess the costs to any party. In general, if the award by the commission is more than the amount offered by the condemning authority, the costs are assessed against the condemning authority. If the award is less than or equal to the amount the entity offered before the proceedings began, the property owner shall pay the costs.

### **MAY A PERSON APPEAL THE DECISION OF THE SPECIAL COMMISSIONERS?**

Yes. A person may appeal the decision to the court that has jurisdiction over the case.

For more information please refer to the Texas Property Code and a publication prepared by the Office of the Texas Attorney General titled "2006 Eminent Domain Made Easy" that can be found at <http://www.oag.state.tx.us/newspubs/publications>